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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,761	11/04/2003	James D. Carper	100-00222	6335

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EXAMINER	
MATZEK, MATTHEW D	

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/700,761	CARPER ET AL.	
	Examiner	Art Unit	
	Matthew D. Matzek	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 January 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *04 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Response to Amendment

1. The Amendment dated 1/23/2006 has been fully considered and entered into the Record. Claims 12-66 have been canceled. Claims 1-11 remain active. Amended claim 1 contains no new matter. The obvious double patenting rejection in view of US 6,475,932 has been withdrawn as the instantly claimed article is substantially non-stretchable and the that of the applied art is elastomeric

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Amended claim 1 recites a "cling film layer having an outer autoadhesive surface such that when engaged with another cling film autoadhesive surface to form a cling-to-cling interface, said cling-to-cling interface provides a peel strength of 1000g/inch or less and a shear strength greater than 4 hours". It is unclear to Examiner as to what surface the autoadhesive surface is supposed to cling because a second cling film has not been claimed. It is improper to recite a property of a theoretical attachment to an unclaimed surface because this permits any number of possible surfaces to be used as the second surface. Each surface with a different structure and composition would have a varying degree of peel strengths and shear strengths and may or may not comply to the instantly claimed limitation.

Claim Rejections - 35 USC § 102/103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Carroll et al. (US 2002/0019187).

a. Carroll et al. teach a breathable composite sheet material comprising a thermoplastic film adhered directly to a fibrous substrate. The fibrous substrate is preferably a breathable polyolefin nonwoven web [0028]. The porous film of Examples 8-17 may be made of a modified polypropylene or an anhydride modified ethylene vinyl acetate [0135].

b. Although Carroll et al. do not explicitly teach the claimed features of a cling-to-cling interface providing a peel strength of 1000 g/inch or less nor a shear strength of greater than 4 hours, it is reasonable to presume that said properties are inherent to Carroll et al. Support for said presumption is found in the use of like materials (i.e. a laminate comprising a nonwoven polyolefin web and a polyolefin film). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed features of a cling-to-cling interface providing a peel strength of 1000 g/inch or less and a shear strength of greater than 4 hours would obviously have been present one the Carroll et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

4. Claims 1-11 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mathis et al. (US 2004/0224596).

a. Mathis et al. teach a breathable barrier comprising a first nonwoven layer and a first microporous film (Abstract). The nonwoven layer may be made of polyolefin [0020]. The film layer may be made of polyethylene, polypropylene and ethylene vinyl acetate and mixtures thereof [0026-27].

b. Although Mathis et al. do not explicitly teach the claimed features of a cling-to-cling interface providing a peel strength of 1000 g/inch or less nor a shear strength of greater than 4 hours, it is reasonable to presume that said properties are inherent to Mathis et al. Support for said presumption is found in the use of like materials (i.e. a laminate comprising a nonwoven polyolefin web and a polyolefin film). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed properties of a cling-to-cling interface providing a peel strength of 1000 g/inch or less and a shear strength of greater than 4 hours, would obviously have been present one the Mathis al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

5. Claims 1-11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Gardner et al. (US 2002/0071944).

a. Gardner et al. teach a laminate of a nonwoven web layer and a breathable film layer (Abstract). The layers of the laminate may be made from polyethylene, polypropylene, ethylene vinyl acetate and mixtures thereof [0020-21].

b. Although Gardner et al. do not explicitly teach the claimed features of a cling-to-cling interface providing a peel strength of 1000 g/inch or lessnor a shear strength of greater than 4 hours, it is reasonable to presume that said properties are inherent to Gardner et al. Support for said presumption is found in the use of like materials (i.e. a laminate comprising a nonwoven polyolefin web and a polyolefin film). The burden is upon Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594. In addition, the presently claimed features of a cling-to-cling interface providing a peel strength of 1000 g/inch or less and a shear strength of greater than 4 hours, would obviously have been present one the Gardner al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote (CCPA 1977) as to the providing of this rejection made above under 35 USC 102.

Double Patenting

6. Claims 1-11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21-34 of copending Application No. 10/981,046. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instantly disclosed article and the applied application are drawn to a laminate comprising a nonwoven layer and a polyolefin cling film layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 1-11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21-34 of copending

Application No. 10/867,438. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instantly disclosed article and the applied application are drawn to a laminate comprising a nonwoven layer and a polyolefin cling film layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

8. Applicant's arguments filed 1/23/2006 have been fully considered but they are not persuasive.

9. Applicant argues that the peel and shear strengths taught by the Carroll et al., Mathis et al. and Gardner et al. references are not those of the outer surface which is instantly claimed the rejections in view of those references should be withdrawn. The newly claimed property of the cling of the outermost surface has been addressed in supra in the prior art rejections and those under 35 U.S.C § 112 2nd paragraph.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NORCA TORRES
PRIMARY EXAMINER

mdm

MDM